

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director
Patrick T. Simpson, Deputy Director



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4800
(505) 827-4824 (fax)

New Mexico Language Access Advisory Committee Agenda- Friday, March 14, 2014

9:00 a.m. - Noon

CHANGE IN ALBUQUERQUE MEETING LOCATION: Room 849, Bernalillo Metropolitan Court, parking in Metro Parking Structure, enter Fifth & Lomas, parking will be validated. Members will be able to enter the court via the staff security portal and bring in cell phones/computers per the LAAC membership list that will be provided to the Court.

To attend by Teleconference: 1-888-757-2790; passcode 710572

1. Introductions & Welcome
2. Approval of the Agenda
3. Approval of the Minutes of January 10, 2014 (attached)

UNFINISHED BUSINESS

4. Appointment of Work Group on Illiteracy, Print Disabilities & Processing Disorders
5. Code of Professional Conduct Work Group Report: Bethany Korp-Edwards (Final Draft Attached) - (Note: This item may be moved later in the agenda, based upon Bethany's work schedule.)

NEW BUSINESS

6. Request for NM AOC Interpreter Certification Numbers: Amy Lovekin
7. Proposal to Change Supreme Court Rules regarding Court Interpreters (see attachment): Justice Edward Chávez
8. LAAC 2014 Plan of Work (see attachment): Pam Sánchez
9. Proposal for May or July LAAC Meeting in Las Cruces: Pam Sánchez

REPORTS

10. Interpreter Scheduling Management System: Pam Sánchez
11. NM Interpreters Conference Update: Lisa Dignan
12. Update on training - Interpreting for LEP/NES Jurors: Aimee Rivera
13. Upcoming Meetings:
New Member Orientation (all welcome), March 14, 1:30 p.m. – 3:30 p.m.
Room 510, Second Judicial District Court
Regular LAAC meeting, Friday, May 9, 9:00 a.m. – Noon

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New Mexico Language Access Advisory Committee Agenda- Friday, January 10, 2014

Minutes

Members Present

Judge Nan Nash, Co-Chair
Justice Edward Chávez
Magdalena Giron
Lisa Dignan
Amy Lovekin
Blanche Raymond-Charles
Renee Valdez
Alex Araiza
Barbara Creel
Barbara Shaffer
Anna Lujan
Catalina Ybarra

Members Absent

Judge Darren Kugler, Co-Chair
Arthur Pepin

Guests Present

Anabel Vela
Paula Couselo
Pip Lustgarten
Bethany Korp-Edwards
Esther Poblet
Jesús Sifuentes
Aimee Rivera

AOC Staff Present

Pam Sánchez

1. Co-Chair Nan Nash called the meeting to order at approximately 9:10 a.m. and a quorum was established.
2. The agenda was approved with removal of item # 11. A report by Artie Pepin on previous LAAC recommendation.
3. The November 8, 2013 minutes were approved with the following changes (see attachment with changes highlighted): item #5 added a reference to the discussion held regarding making the NES juror training mandatory for all interpreters interpreting for jurors and item #9 corrected the spelling of Esther Poblet's surname.
4. Code of Professional Conduct Work Group Report was presented by Bethany Korp-Edwards. She reported that the group has worked to simplify the code of conduct, refining it to four key standards with most of the specific tenants of the current code following within one of the four primary standards. After discussion, the committee recommended some edits, which Bethany will incorporate for LAAC review prior to the "final" draft being sent out to the interpreters for comment. (See attached)
5. Limited and Non-English Speaking Jurors Interpreter Training: Aimee Rivera reported for the Work Group and the primary discussion focused on the proposed additions to the Standards of Practice. A few minor changes were recommended and a final version of the recommended additions to the Standards of Practice, moved for approval by Magdalena Giron, seconded by Alex Araiza, and approved by the LAAC, are attached. These will be distributed to interpreters for comment following the March LAAC meeting. Aimee also reported that the work group is looking at

NMCLA technology and considering a two hour online training for those interpreters who interpret for jurors. LAAC members were in support of this user-friendly approach for this mandatory training.

6. 2014 LAAC Membership Recommendations to fill interpreter vacancies were discussed and acted upon in executive session. The committee agreed to recommend Mohamed Ali and Jesús Sifuentes to the Supreme Court for appointment to LAAC.
7. Illiteracy as a Language Access Issue – LAAC Role: Pip Lustgarten, AOC consultant supporting the work of the NM Judicial Translation Project Team, explained that the Translation Project asked that the issue of illiteracy, relating to language access in the broader perspective, be referred to the LAAC for its consideration. After discussion regarding broadening the focus beyond illiteracy as commonly understood to include a range of print disabilities, such as dyslexia, blindness, and processing disorders, it was moved by Lisa Dignan, seconded by Amy Lovekin, and approved by the membership, that LAAC appoint a work group to address this spectrum of issues from a language access perspective. The work group is to be appointed at the March LAAC meeting.
8. LAAC 2014 Plan of Work – Tabled until March 14, 2013 LAAC Meeting
9. Interpreter Scheduling Management System: Pam Sánchez reported that implementation with identified vendor, scheduleinterpreter.com, is on hold while various detail are being addressed.
10. Language Access Basic Training (LABT) National Project: Paula Couselo, NMCLA Director, provided an update on AOC's SJI-funded training project. A pilot test of the full LABT Suite was conducted in December with 136 participants from seven states, including New Mexico. Overall the feedback is very positive. The final product will be distributed by the National Center for State Courts. The technology developed for delivery of the product will be used to support NMCLA's other New Mexico, as well as national, training efforts.
11. Next Meeting: Friday, March 14, 9:00 a.m. – Noon

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New Mexico Language Access Advisory Committee November 8, 2013

Minutes

Members Present

Weldon Neff, Chair
Catalina Ybarra
Lisa Dignan
Alex Araiza
Honorable Edward Chávez
Honorable Nan Nash
Barbara Shaffer
Renee Valdez
Andrea Cutter
Amy Lovekin
Blanche Raymond Charles

Members Absent

Barbara Creel
Arthur Pepin

Guests

Anabel Vela
Anna Lujan
Aimee Rivera
Esther Poblet
Peggy Cadwell

AOC Staff

Pamela Sánchez

4. The meeting was called to order by Chair, Weldon Neff, at 9:05 a.m. and a quorum was established.
5. The agenda was approved as submitted.
6. The Minutes of September 13, 2013 were approved as submitted
4. Following discussion the *Statewide Language Access Report and Plan: Update for FY 14 - FY15* was unanimously approved for submission to the Supreme Court as moved by Lisa Dignan, seconded by Nan Nash.
5. The Limited and Non-English Speaking Jurors Interpreter Training work group reported its plans to schedule the first of these mandatory trainings in March, 2013 with day-long sessions March 15 in Albuquerque and March 22 in Las Cruces. **After lengthy discussion, the LAAC members agreed by consensus that the training would remain mandatory for any certified court interpreter interpreting for jurors.** The work group will bring the detailed curriculum to the January LAAC meeting for discussion. It was agreed that ultimately the standards for interpreting for jurors as presented in this new training should be integrated into the AOC's Standards of Practice and also be provided to judges.
6. A revised version of the draft Interpreter Agreement was presented by Pam Sánchez who had incorporated changes recommended by the AOC's General Counsel, Fern Goodman, who had also questioned the need for an agreement. Discussion underscored the LAAC's interest in pursuing an agreement and led to a general

agreement that a contract might be more appropriate. It was agreed that Judge Nash, Barbara Shaffer, and Pam would work with Fern Goodman on this issue and return to the LAAC at a later date with a revised draft or other recommendation.

7. Upon review of the draft Ethical Guidelines for Language Access Specialists, it was moved by Lisa Dignan and seconded by Andrea Cutter, Barb Shaffer, and Alex Araiza that the guidelines be approved. It was also recommended that prior to being distributed the guidelines be reviewed by the Ethics Work Group to ensure consistency with the NM Interpreters Code of Professional Conduct.
8. 2014 LAAC Membership Recommendations: It was announced by the Chair, that the three members who were eligible for reappointment, Barbara Creel, Catalina Ybarra, and Justice Chávez, had accepted reappointment, that Anna Lujan, CEO of the Fourth Judicial District Court had been recommended by the CEOS to replace Weldon Neff on the committee since he was no longer eligible for reappointment and this information had been forwarded to the Supreme Court along with a recommendation from the outgoing Chair that either Justice Chávez or Judge Nash be appointed as LAAC Chair.

It was also reported that Rosa Lopez-Gaston had resigned from the LAAC, creating two interpreter vacancies on the committee. Three letters of interest had been received to-date for the initial interpreter vacancy. These were received from Esther Poble, Maria Conde-Perez, and Jesus Sifuentes. The LAAC agreed by consensus to thank these individuals and retain their information for consideration while encouraging interpreters of languages other than Spanish and staff interpreters to consider membership. A recommendation to fill the two interpreter vacancies will be determined at the January 2014 LAAC meeting. New member orientation will be postponed until all new members have been approved by the Court.

9. It was moved by Nan Nash, and seconded by Barbara Shaffer that the Bench Card for Judges be approved and forwarded to the Supreme Court for distribution. Motion passed unanimously with thanks to the work group and its leader, Aimee Rivera.
10. Interpreter Scheduling Management RFP Update: Pam Sánchez reported that the contract has been finalized with ScheduleInterpreter.com and plans for training are in place with a start date sometime in late December.
11. NM Interpreters Conference FY13 Debrief/Planning for FY14: Lisa Dignan reported that the 2013 conference was successful with an attendance of about 150, including presenters. It focused on skills building and included sessions for signed language as well as spoken language interpreters. The conference was covered by Univision. The 2014 conference planning is underway and will provide interpreters with an opportunity to hear from those who use interpreters and others, attorneys, judges, doctors, etc. AOC interpreter coordinators are assisting with the planning for the conference, which is again scheduled for the last weekend in September.
12. The Ethics work group reported that it should have recommendations for the LAAC at its January meeting.
13. Thank you to Weldon Neff. Pam Sanchez and LAAC members thanked Weldon for his years of service and leadership to the New Mexico Judiciary on issues pertaining to language access.

Next Meeting: Friday, January 10, 9:00 a.m. – Noon

STANDARDS OF PROFESSIONAL RESPONSIBILITY

DRAFT REVISED 1.10.14

Introduction

Interpreters ensure due process guaranteed under the New Mexico and United States Constitutions by placing a party whose first or primary language is not English in a comparable situation to a party whose first or primary language is English.

Scope

These Standards of Professional Responsibility are binding on all Certified Court Interpreters and Justice System Interpreters who provide services to the New Mexico Courts.

Standard 1. Interpreters interpret faithfully and accurately.

Illustrative behaviors:

- Interpreters convey the message from one language to another without addition, omission, or changes of meaning.
- Interpreters preserve the register of the language used.
- Interpreters preserve speakers' ambiguities and nuances.
- Interpreters analyze objectively any challenge to their performance and correct any errors of interpretation.
- Interpreters request clarifications of ambiguous statements or unfamiliar vocabulary.

Standard 2. Interpreters confine themselves to interpreting. _____ [I don't know why I drew this line on my draft, anyone remember?]

Illustrative Behaviors:

- Interpreters work unobtrusively.
- Interpreters maintain impartiality and avoid giving even the appearance of partiality. [details?]
- Interpreters avoid undue contact with witnesses, attorneys, parties and their families, and any unauthorized contact with jurors.
- Interpreters refrain from expressing personal opinions or offering procedural advice. [details?]

Standard 3. Interpreters act strictly in the interests of the court they serve.

Illustrative behaviors:

- Interpreters reflect proper court decorum.
- Interpreters treat court officials, staff, the public, parties, and other interpreters with dignity and respect.
- As officers of the court, interpreters may provide neutral, non-substantive information (e.g. the location of a particular judge's courtroom).
- Interpreters neither accept nor offer remuneration, gifts, gratuities, or valuable consideration in excess of their authorized compensation.
- Interpreters strive to avoid conflicts of interest or even the appearance thereof. They inform the court immediately of any actual or perceived conflict of interest.
- Interpreters disclose to the court and to the parties any prior involvement with the case or any personal involvement with the parties or others significantly involved in the case (in or out of court).
- Interpreters never take advantage of knowledge obtained in the performance of official duties, or by their access to court records, facilities, or privileges, for their own or another's personal or professional gain.
- Interpreters fairly and correctly represent their professional qualifications.
- Interpreters respect the need for confidentiality and secrecy as protected under applicable state and federal law.
- Interpreters shall inform the court of any impediment to fulfilling their responsibilities to ensure equal linguistic access to justice.
- Interpreters have a duty to report violations of these standards to the NMAOC.

Standard 4. Interpreters are language access professionals.

- Interpreters educate themselves as to current best practices in matters of team interpreting, equipment use, etc., and support and employ such practices.
- Interpreters prepare themselves for all assignments they accept, via research on the case and subject matter, consultation with teammates, and necessary contact with clients. [details?]

- Interpreters refuse any assignment for which they are not qualified.
- Interpreters support other interpreters by sharing knowledge and expertise with them, to the extent practicable, in the interests of the court.
- Interpreters have the duty to call to the court's attention any factors or conditions that adversely affect their ability to perform their duties.
- Interpreters are discreet and respect the privacy of those they interpret for, even when such information is not bound by rules of confidentiality.

As an AOC-recognized interpreter as defined above, I accept and agree to these Standards. I understand complaints may be filed and sanctions imposed for violations thereof, in accordance with *Procedures for Processing Complaints Regarding Interpreter Conduct and Performance*.

Signature

Date

Recommended Additions to New Mexico Court Interpreter Standards of Practice and Payment Policies

Interpreting for Jurors

- Two interpreters will be assigned to jury selection and the trial. One interpreter will be assigned to the potential juror (prior to jury selection) while the second interpreter will prepare the courtroom and participants for the interpreting process and working with an NES juror. The second interpreter will ask for a list of witnesses and exhibits, prepare attorneys for the interpreting process (asking for clarifications, objections, and use of audio/visual aids). This interpreter will ask to review all recorded materials that will be used as exhibits before the trial begins.
- **Interpreters will request** an opportunity to briefly meet with the Judge and Attorneys
 - Preliminary Discussion with Judge: Oaths, Asking for Clarification, Recorded information, Role of the Interpreter, Breaks, Teams, Objections
 - Preliminary Discussion with Attorneys: Role of the Interpreter, List of Witnesses and Exhibits, Asking for clarification, Objections
- Oaths: Oath of the Interpreter, Pre-deliberation, and Post-deliberation Instructions. In the event that new interpreters are assigned to the trial or deliberations, the replacement interpreters must be sworn in on the record and in front of the parties and attorneys
- Special considerations: Sight translations, placement of the microphone while an NES witness is testifying and recorded information; interpreters **will** request time to review materials/exhibits before providing an interpretation
- Breaks: At least one interpreter must be with the juror at all times while the jury is officially convened, including lunch and dinner breaks. Interpreters will decide on how to best divide the time so that each member of the interpreting team is able to take a lunch or dinner break while the jurors are together. Interpreters will not meet privately with the NES juror during breaks or when the jury has been officially dismissed.

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- Interpreters prepare themselves for all assignments they accept, via research on the case and subject matter, consultation with teammates, and necessary contact with clients.
- Interpreters refuse any assignment for which they are not qualified and recuse themselves as soon as possible if it becomes apparent they are not qualified for an assignment already in progress.
- Interpreters support other interpreters by sharing knowledge and expertise with them, to the extent practicable, in the interests of the court.
- Interpreters have the duty to call to the court's attention any factors or conditions that adversely affect their ability to perform their duties.
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Signature

Date

*Code of Conduct Workgroup, B. Korp, Chair
N.G. Nash, P. Cadwell, A. Cutter, A. Rivera*

Proposed Rules for Magistrate and Municipal Courts re interpreter services

From : Edward Chavez <supelc@nmcourts.gov> Wed, Feb 19, 2014 02:52 PM
 Subject Proposed Rules for Magistrate and Municipal Courts
 : re interpreter services
 To : Nan G. Nash <albdngn@nmcourts.gov>, Darren M
 Kugler <lcrddmk@nmcourts.gov>
 Cc : Pamela Sanchez <aocpjs@nmcourts.gov>, Sally A.
 Paez <supsap@nmcourts.gov>

Good Afternoon Judge Nash and Judge Kugler. The Supreme Court has asked me to request that you put on the next LAC agenda consideration of proposed rules 6-115 and 8-113. These rules were submitted to the Court along with a request that the rules be published for comment. The rules concern the appointment of non-certified court interpreters or a determination by Magistrate or Municipal court judges that an interpreter is not required. The Supreme Court would like the input of the LAC before we make a final determination whether the rules should be published for comment as is, or with modifications. Because of our new schedule for rules we need to have the LAC input fairly quickly. Thus, our request that the LAC add this matter to its next agenda. By copy of this email to Sally Paez, Staff Attorney to the Supreme Court I am asking her to send the rules and forms to you electronically.

Let me know if you have any questions.

Edward L. Chavez

1 **6-115. Court interpreters.**

2 A. **Scope and definitions.** This rule applies to all criminal proceedings filed in
3 the magistrate court. The following definitions apply to this rule:

4 (1) “case participant” means a party, witness, or other person required or
5 permitted to participate in a proceeding governed by these rules;

6 (2) “interpretation” means the transmission of a spoken or signed message
7 from one language to another;

8 (3) “transcription” means the interpretation of an audio, video, or
9 audio-video recording, which includes but is not limited to 911 calls, wire taps, and voice
10 mail messages, that is memorialized in a written transcript for use in a court proceeding;

11 (4) “translation” means the transmission of a written message from one
12 language to another;

13 (5) “court interpreter” means a person who provides interpretation or
14 translation services for a case participant;

15 (6) “certified court interpreter” means a court interpreter who is certified
16 by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the
17 Administrative Office of the Courts or who is acknowledged in writing by the Administrative
18 Office of the Courts as a court interpreter certified by another jurisdiction that is a member
19 of the Consortium for Language Access in the Courts;

20 (7) “justice system interpreter” means a court interpreter who is listed on
21 the Registry of Justice System Interpreters maintained by the Administrative Office of the

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**Committee Approved
October 11, 2013**

1 Courts;

2 (8) “language access specialist” means a bilingual employee of the New
3 Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts
4 as having successfully completed the New Mexico Center for Language Access Language
5 Access Specialist Certification program and is in compliance with the related continuing
6 education requirements;

7 (9) “non-certified court interpreter” means a justice system interpreter,
8 language access specialist, or other court interpreter who is not certified by and listed on the
9 New Mexico Directory of Certified Court Interpreters maintained by the Administrative
10 Office of the Courts;

11 (10) “sight translation” means the spoken or signed translation of a written
12 document; and

13 (11) “written translation” means the translation of a written document from
14 one language into a written document in another language.

15 **B. Identifying a need for interpretation.**

16 (1) The need for a court interpreter exists whenever a case participant is
17 unable to hear, speak, or otherwise communicate in the English language to the extent
18 reasonably necessary to fully participate in the proceeding. The need for a court interpreter
19 may be identified by the court or by a case participant. A court interpreter shall be appointed
20 if one is requested, unless the court determines by clear and convincing evidence that an
21 interpreter is not needed and makes a written finding explaining that evidence.

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1 (2) The court is responsible for making arrangements for a court
2 interpreter for a juror who needs one.

3 (3) A party is responsible for notifying the court of the need for a court
4 interpreter as follows:

5 (a) if the defendant needs a court interpreter, [~~defense counsel~~] the
6 defendant shall notify the court at arraignment or within ten (10) days after waiver of
7 arraignment; and

8 (b) if a court interpreter is needed for a party's witness, the party
9 shall notify the court in writing substantially in a form approved by the Supreme Court upon
10 service of a notice of hearing and shall indicate whether the party anticipates the proceeding
11 will last more than two (2) hours.

12 (4) If a party fails to timely notify the court of a need for a court
13 interpreter, the court may assess costs against that party for any delay caused by the need to
14 obtain a court interpreter unless that party establishes good cause for the delay.

15 (5) Notwithstanding any failure of a party, juror, or other case participant
16 to notify the court of a need for a court interpreter, the court shall appoint a court interpreter
17 for a case participant whenever it becomes apparent from the court's own observations or
18 from disclosures by any other person that a case participant is unable to hear, speak, or
19 otherwise communicate in the English language to the extent reasonably necessary to fully
20 participate in the proceeding.

21 C. **Appointment of court interpreters.**

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1 (1) When a need for a court interpreter is identified under Paragraph B of
2 this rule, the court shall appoint a certified court interpreter except as otherwise provided in
3 this paragraph.

4 (2) ~~[For cases exclusively involving charges under the Motor Vehicle~~
5 ~~Code except for driving while under the influence of intoxicating liquor or drugs, reckless~~
6 ~~driving, or driving while license suspended or revoked, the court may appoint a language~~
7 ~~access specialist without complying with Subparagraph (5) of this paragraph.] This
8 subparagraph does not apply in cases that involve an offense of driving while under the
9 influence of intoxicating liquor or drugs, an offense of domestic violence, or any offense that
10 prescribes mandatory imprisonment as a penalty. The court may appoint a language access
11 specialist, or, if no language access specialist is available, any non-certified court interpreter,
12 without complying with Subparagraph C(5) or Paragraph D of this rule, if the court makes
13 the following written findings:~~

14 (a) either that a sentence of imprisonment will not be imposed or
15 that the charged offenses do not prescribe incarceration as a possible penalty;

16 (b) that the court has concluded after evaluating the totality of the
17 circumstances, including the nature of the court proceeding and the potential penalty or
18 consequences flowing from the proceeding, that an accurate and complete interpretation of
19 the proceeding can be accomplished with a non-certified court interpreter;

20 (c) that the proposed court interpreter has adequate language skills,
21 knowledge of interpretation techniques, and familiarity with interpretation in a court setting

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(d) that the court has qualified the interpreter under Subparagraph
E(1) of this rule.

(4) To avoid the appearance of collusion, favoritism, or exclusion of English speakers from the process, the judge shall not act as a court interpreter for the proceeding or regularly speak in a language other than English during the proceeding. A party's attorney shall not act as a court interpreter for the proceeding, except that a party and the party's attorney may engage in confidential attorney-client communications in a language other than English.

(5) If the court has made diligent, good faith efforts to obtain a certified court interpreter and one is not reasonably available, after consulting with the Administrative Office of the Courts, the court may appoint a justice system interpreter subject to the restrictions in Sub-subparagraphs (d) and (e) of this subparagraph. If the court has made

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1 diligent, good faith efforts to obtain a justice system interpreter and one is not reasonably
2 available, after consulting with the Administrative Office of the Courts, the court may
3 appoint a language access specialist or less qualified non-certified court interpreter only after
4 the following requirements are met:

5 (a) the court provides notice to the parties substantially in a form
6 approved by the Supreme Court that the court has contacted the Administrative Office of the
7 Courts for assistance in locating a certified court interpreter or justice system interpreter but
8 none is reasonably available and has concluded after evaluating the totality of the
9 circumstances including the nature of the court proceeding and the potential penalty or
10 consequences flowing from the proceeding that an accurate and complete interpretation of
11 the proceeding can be accomplished with a less qualified non-certified court interpreter;

12 (b) the court makes a written finding that the proposed court
13 interpreter has adequate language skills, knowledge of interpretation techniques, and
14 familiarity with interpretation in a court setting to provide an accurate and complete
15 interpretation for the proceeding;

16 (c) the court makes a written finding that the proposed court
17 interpreter has read, understands, and agrees to abide by the New Mexico Court Interpreters
18 Code of Professional Responsibility set forth in Rule 23-111 NMRA;

19 (d) with regard to a non-certified signed interpreter, in no event
20 shall the court appoint a non-certified signed language interpreter who does not, at a
21 minimum, possess both a community license from the New Mexico Regulations and

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1 Licensing Department and a generalist interpreting certification from the Registry of
2 Interpreters for the Deaf; and

3 (e) a non-certified court interpreter shall not be used for a juror.

4
5 **D. Waiver of the right to a court interpreter.** Any case participant identified
6 as needing a court interpreter under Paragraph B of this rule may at any point in the case
7 waive the services of a court interpreter with approval of the court only if the court explains
8 in open court through a court interpreter the nature and effect of the waiver and makes a
9 written finding that the waiver is knowingly, voluntarily, and intelligently made. If the case
10 participant is the defendant in the criminal proceeding, the waiver shall be in writing and the
11 court shall further determine that the defendant has consulted with counsel regarding the
12 decision to waive the right to a court interpreter. The waiver may be limited to particular
13 proceedings in the case or for the entire case. With the approval of the court, the case
14 participant may retract the waiver and request a court interpreter at any point in the
15 proceedings.

16 **E. Procedures for using court interpreters.** The following procedures shall
17 apply to the use of court interpreters:

18 (1) Qualifying the court interpreter. Before appointing a court interpreter
19 to provide interpretation services to a case participant, the court shall qualify the court
20 interpreter in accordance with Rule 11-604 of the Rules of Evidence. The court may use the
21 questions in Form 9-109 NMRA to assess the qualifications of the proposed court interpreter.

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1 A certified court interpreter is presumed competent, but the presumption is rebuttable.
2 Before qualifying a justice system interpreter or other less qualified non-certified court
3 interpreter, the court shall inquire into the following matters:

4 (a) whether the proposed court interpreter has assessed the
5 language skills and needs of the case participant in need of interpretation services; and

6 (b) whether the proposed court interpreter has any potential
7 conflicts of interest.

8 (2) Instructions regarding the role of the court interpreter during trial.
9 Before the court interpreter begins interpreting for a party during trial, the court shall instruct
10 the parties and others present in the courtroom regarding the role of the court interpreter. If
11 the court interpreter will provide interpretation services for a juror, the court also shall
12 instruct the jury prior to deliberations in accordance with UJI 14-6022 NMRA.

13 (3) Oath of the court interpreter. Before a court interpreter begins
14 interpreting, the court shall administer an oath to the court interpreter as required by Section
15 38-10-8 NMSA 1978. If a court interpreter will provide interpretation services for a juror,
16 the court also shall administer an oath to the court interpreter prior to deliberations in
17 accordance with UJI 14-6021 NMRA. All oaths required under this subparagraph shall be
18 given in open court.

19 (4) Objections to the qualifications or performance of a court interpreter.
20 A party shall raise any objections to the qualifications of a court interpreter when the court
21 is qualifying a court interpreter as required by Subparagraph (1) of this paragraph or as soon

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1 as the party learns of any information calling into question the qualifications of the court
2 interpreter. A party shall raise any objections to court interpreter error at the time of the
3 alleged interpretation error or as soon as the party has reason to believe that an interpretation
4 error occurred that affected the outcome of the proceeding.

5 (5) Record of the court interpretation. Upon the request of a party, the
6 court may make and maintain an audio recording of all spoken language court interpretations
7 or a video recording of all signed language interpretations. Unless the parties agree
8 otherwise, the party requesting the recording shall pay for it. Any recordings permitted by
9 this subparagraph shall be made and maintained in the same manner as other audio or video
10 recordings of court proceedings. This subparagraph shall not apply to court interpretations
11 during jury discussions and deliberations.

12 (6) Court interpretation for multiple case participants. When more than
13 one case participant needs a court interpreter for the same spoken language, the court may
14 appoint the same court interpreter to provide interpretation services for those case
15 participants. When more than one case participant needs court interpretation for a signed
16 language, separate court interpreters shall be appointed for each case participant. If a party
17 needs a separate court interpreter for attorney-client communications during a court
18 proceeding, prior to the commencement of the court proceeding, the party shall obtain a court
19 interpreter of the party's own choosing and at the party's own expense. If the party is a
20 criminal defendant represented by court-appointed counsel, a court interpreter for
21 attorney-client communications may be paid as allowed under the Indigent Defense Act and

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1 Public Defender Act.

2 (7) Use of team court interpreters. To avoid court interpreter fatigue and
3 promote an accurate and complete court interpretation, when the court anticipates that a court
4 proceeding requiring a court interpreter for a spoken language will last more than two (2)
5 hours the court shall appoint a team of two (2) court interpreters to provide interpretation
6 services for each spoken language. For court proceedings lasting less than two (2) hours, the
7 court may appoint one (1) court interpreter but the court shall allow the court interpreter to
8 take breaks approximately every thirty (30) minutes. The court shall appoint a team of two
9 (2) court interpreters for each case participant who needs a signed language court interpreter
10 when the court proceeding lasts more than one (1) hour. If a team of two (2) court
11 interpreters are required under this subparagraph, the court may nevertheless proceed with
12 only one (1) court interpreter if the following conditions are met:

13 (a) two (2) qualified court interpreters could not be obtained by
14 the court;

15 (b) the court makes a written finding that it contacted the
16 Administrative Office of the Courts for assistance in locating two (2) qualified court
17 interpreters but two (2) could not be found; and

18 (c) the court allows the court interpreter to take a five (5)-minute
19 break approximately every thirty (30) minutes.

20 (8) Use of court interpreters for translations and transcriptions. If a court
21 interpreter is required to provide a sight translation, written translation, or transcription for

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1 use in a court proceeding, the court shall allow the court interpreter a reasonable amount of
2 time to prepare an accurate and complete translation or transcription and, if necessary, shall
3 continue the proceeding to allow for adequate time for a translation or transcription.
4 Whenever possible, the court shall provide the court interpreter with advance notice of the
5 need for a translation or transcription before the court proceeding begins and, if possible, the
6 item to be translated or transcribed.

7 (9) Modes of court interpretation. The court shall consult with the court
8 interpreter and case participants regarding the mode of interpretation to be used to ensure a
9 complete and accurate interpretation.

10 (10) Remote spoken language interpretation. Court interpreters may be
11 appointed to serve remotely by audio or audio-video means approved by the Administrative
12 Office of the Courts for any proceeding when a court interpreter is otherwise not reasonably
13 available for in-person attendance in the courtroom. Electronic equipment used during the
14 hearing shall ensure that all case participants hear all statements made by all case participants
15 in the proceeding. If electronic equipment is not available for simultaneous interpreting, the
16 hearing shall be conducted to allow for consecutive interpreting of each sentence. The
17 electronic equipment that is used must permit attorney-client communications to be
18 interpreted confidentially.

19 (11) Court interpretation equipment. The court shall consult and
20 coordinate with the court interpreter regarding the use of any equipment needed to facilitate
21 the interpretation.

(12) Removal of the court interpreter. The court may remove a court interpreter for any of the following reasons:

- (a) inability to adequately interpret the proceedings;
- (b) knowingly making a false interpretation;
- (c) knowingly disclosing confidential or privileged information obtained while serving as a court interpreter;
- (d) knowingly failing to disclose a conflict of interest that impairs the ability to provide complete and accurate interpretation;
- (e) failing to appear as scheduled without good cause;
- (f) misrepresenting the court interpreter's qualifications or credentials;
- (g) acting as an advocate; or
- (h) failing to follow other standards prescribed by law and the New Mexico Court Interpreter's Code of Professional Responsibility.

(13) Cancellation of request for a court interpreter. A party shall advise the court in writing substantially in a form approved by the Supreme Court as soon as it becomes apparent that a court interpreter is no longer needed for the party or a witness to be called by the party. The failure to timely notify the court that a court interpreter is no longer needed for a proceeding is grounds for the court to require the party to pay the costs incurred for securing the court interpreter.

F. Payment of costs for the court interpreter. Unless otherwise provided in

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1 this rule, and except for court interpretation services provided by an employee of the court
2 as part of the employee's normal work duties, all costs for providing court interpretation
3 services by a court interpreter shall be paid from the Jury and Witness Fee Fund in amounts
4 consistent with guidelines issued by the Administrative Office of the Courts.

5 [Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending
6 on or after January 1, 2013; amended by Supreme Court Order No. _____,
7 effective_____.]

8 **Committee commentary.**-This rule governs the procedure for the use of court interpreters
9 in court proceedings. In addition to this rule, the New Mexico Judiciary Court Interpreter
10 Standards of Practice and Payment Policies issued by the Administrative Office of the Courts
11 (the AOC Standards), also provide guidance to the courts on the certification, use, and
12 payment of court interpreters. But in the event of any conflicts between the AOC Standards
13 and this rule, the rule controls.

14 The rule requires the use of certified court interpreters whenever possible but permits
15 the use of less qualified interpreters in some situations. For purposes of this rule, a certified
16 court interpreter may not be reasonably available if one cannot be located or if funds are not
17 available to pay for one. [~~But in all instances~~] Except as provided in Subparagraphs C(2) and
18 C(3) of this rule, before a court may use a non-certified court interpreter, the court must
19 contact the Administrative Office of the Courts (AOC) for assistance and to confirm whether
20 funds may in fact be available to pay for a certified court interpreter.

21 The rule does not attempt to set forth the criteria for determining who should be a

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1 certified court interpreter. Instead, the task of certifying court interpreters is left to the AOC.
2 When a court interpreter is certified by the AOC, the certified court interpreter is placed on
3 the New Mexico Directory of Certified Court Interpreters, which is maintained by the AOC
4 and can be viewed on its web site. A certified court interpreter is also issued an
5 identification card by the AOC, which can be used to demonstrate to the court that the
6 cardholder is a certified court interpreter.

7 In collaboration with the New Mexico Center for Language Access (NMCLA), the
8 AOC is also implementing a new program for approving individuals to act as justice system
9 interpreters and language access specialists who are specially trained to provide many
10 interpretation services in the courts that do not require a certified court interpreter.
11 Individuals who successfully complete the Justice System Interpreting course of study
12 offered by the NMCLA are approved by the AOC to serve as justice system interpreters and
13 will be placed on the AOC Registry of Justice System Interpreters. Those who are approved
14 as justice system interpreters will also be issued identification cards that may be presented
15 in court as proof of their qualifications to act as a justice system interpreter. Under this rule,
16 if a certified court interpreter is not reasonably available, the court should first attempt to
17 appoint a justice system interpreter to provide court interpretation services. If a justice
18 system interpreter is not reasonably available, the court must contact the AOC for assistance
19 before appointing a non-certified court interpreter for a court proceeding.

20 In addition to setting forth the procedures and priorities for the appointment of court
21 interpreters, this rule also provides procedures for the use of court interpreters within the

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1 courtroom. In general, the court is responsible for determining whether a juror needs a court
2 interpreter, and the parties are responsible for notifying the court if they or their witnesses
3 will need a court interpreter. But in most cases, the court will be responsible for paying for
4 the cost of court interpretation services, regardless of who needs them. However, the court
5 is not responsible for providing court interpretation services for confidential attorney-client
6 communications during a court proceeding, nor is the court responsible for providing court
7 interpretation services for witness interviews or pre-trial transcriptions or translations that
8 the party intends to use for a court proceeding. When the court is responsible for paying the
9 cost of the court interpretation services, the AOC standards control the amounts and
10 procedures for the payment of court interpreters.

11 Although this rule generally applies to all court interpreters, the court should be aware
12 that in some instances the procedures to follow will vary depending on whether a spoken or
13 signed language court interpreter is used. Courts should also be aware that in some instances
14 when court interpretation services are required for a deaf or hard-of-hearing individual,
15 special care should be taken because severe hearing loss can present a complex combination
16 of possible language and communication barriers that traditional American Sign
17 Language/English interpreters are not trained or expected to assess. If a deaf or
18 hard-of-hearing individual is having trouble understanding a court interpreter and there is an
19 indication that the person needs other kinds of support, the court should request assistance
20 from the AOC for a language assessment to determine what barriers to communication exist
21 and to develop recommendations for solutions that will provide such individuals with

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1 meaningful access to the court system.

2 While this rule seeks to provide courts with comprehensive guidance for the
3 appointment and use of court interpreters, the courts should also be aware that the AOC
4 provides additional assistance through a full-time program director who oversees the New
5 Mexico Judiciary's court interpreter program and who works in tandem with the Court
6 Interpreter Advisory Committee appointed by the Supreme Court to develop policies and
7 address problems associated with the provision of court interpreter services in the courts.
8 Whenever a court experiences difficulties in locating a qualified court interpreter or is unsure
9 of the proper procedure for providing court interpretation services under this rule, the court
10 is encouraged, and sometimes required under this rule, to seek assistance from the AOC to
11 ensure that all case participants have full access to the New Mexico state court system.

12 Subparagraphs (C)(2) and (C)(3) of this rule were amended in 2014 to address the
13 appointment of non-certified court interpreters in limited types of cases. In drafting these
14 amendments, the committee considered due process considerations and the following four
15 factors identified by the Department of Justice as relevant to Title VI of the Civil Rights Act
16 of 1964: (1) the number of limited English proficient (LEP) persons eligible to be served by
17 the magistrate court; (2) the frequency with which LEP persons come into contact with the
18 magistrate court; (3) the nature of the cases heard by the magistrate court; and (4) the cost
19 of language access services and the resources available to the magistrate court. See Guidance
20 to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National
21 Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455,

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41,459 (June 18, 2002) (identifying four factors that a recipient of federal funding should consider to determine the extent of the recipient's obligation under Title VI to provide services for LEP persons).

Subparagraph (C)(2) allows the court to appoint a language access specialist or other qualified, competent court interpreter in any case in which the defendant does not face the possibility of imprisonment and has not been charged with an offense involving driving while under the influence of intoxicating liquor or drugs or domestic violence. The court must use a Supreme Court approved form to appoint a non-certified court interpreter under Subparagraph (C)(2).

Subparagraph (C)(3) applies only to the limited types of cases that may be disposed of without a hearing under Rule 6-503 NMRA. In such a case, the defendant may choose to resolve the case by signing an appearance, entering a plea of no contest or guilty, waiving trial, and paying a fine. Subparagraph (C)(3) permits such a defendant to use an interpreter of the defendant's own choosing or a court or municipal employee, if available. See 67 Fed. Reg. 41,462 (explaining that an LEP individual should be permitted to use an interpreter of his or her choosing as long as use of an informal interpreter is appropriate under the circumstances); 67 Fed. Reg. 41,461 (explaining that hiring bilingual staff is often the best, most economical option for providing language access services).

The procedures outlined in Subparagraphs (C)(2) and (C)(3) allow the use of non-certified court interpreters only in cases that do not involve serious penalties or the possibility of imprisonment. These provisions facilitate the administration of justice in magistrate courts

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1 because the courts have limited budgets to pay for certified court interpreters and because
2 few certified court interpreters are available to serve in New Mexico's rural areas. Requiring
3 the court to locate, appoint, and pay a certified court interpreter in a case involving a minor
4 code or ordinance violation, e.g., a minor traffic infraction or the failure to trim weeds, could
5 impose undue delays and burdens on both the LEP person and the court.

6 [Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending
7 on or after January 1, 2013; amended by Supreme Court Order No. _____, effective
8 _____.]

1 **8-113. Court Interpreters.**

2 A. **Scope and definitions.** This rule applies to all proceedings filed in the
3 municipal court. The following definitions apply to this rule:

4 (1) “case participant” means a party, witness, or other person required or
5 permitted to participate in a proceeding governed by these rules;

6 (2) “interpretation” means the transmission of a spoken or signed message
7 from one language to another;

8 (3) “transcription” means the interpretation of an audio, video, or audio-
9 video recording, which includes but is not limited to 911 calls, wire taps, and voice mail
10 messages, that is memorialized in a written transcript for use in a court proceeding;

11 (4) “translation” means the transmission of a written message from one
12 language to another;

13 (5) “court interpreter” means a person who provides interpretation or
14 translation services for a case participant;

15 (6) “certified court interpreter” means a court interpreter who is certified
16 by and listed on the New Mexico Directory of Certified Court Interpreters maintained by the
17 Administrative Office of the Courts or who is acknowledged in writing by the Administrative
18 Office of the Courts as a court interpreter certified by another jurisdiction that is a member
19 of the Consortium for Language Access in the Courts;

20 (7) “justice system interpreter” means a court interpreter who is listed on
21 the Registry of Justice System Interpreters maintained by the Administrative Office of the

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1 Courts;

2 (8) “language access specialist” means a bilingual employee of the New
3 Mexico Judiciary who is recognized in writing by the Administrative Office of the Courts
4 as having successfully completed the New Mexico Center for Language Access Language
5 Access Specialist Certification program and is in compliance with the related continuing
6 education requirements;

7 (9) “non-certified court interpreter” means a justice system interpreter,
8 language access specialist, or other court interpreter who is not certified by and listed on the
9 New Mexico Directory of Certified Court Interpreters maintained by the Administrative
10 Office of the Courts;

11 (10) “sight translation” means the spoken or signed translation of a written
12 document; and

13 (11) “written translation” means the translation of a written document from
14 one language into a written document in another language.

15 **B. Identifying a need for interpretation.**

16 (1) The need for a court interpreter exists whenever a case participant is
17 unable to hear, speak, or otherwise communicate in the English language to the extent
18 reasonably necessary to fully participate in the proceeding. The need for a court interpreter
19 may be identified by the court or by a case participant. A court interpreter shall be appointed
20 if one is requested, unless the court determines by clear and convincing evidence that an
21 interpreter is not needed and makes a written finding explaining that evidence.

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1 (2) A party is responsible for notifying the court of the need for a court
2 interpreter as follows:

3 (a) if the defendant needs a court interpreter, [~~defense counsel~~] the
4 defendant shall notify the court at arraignment or within ten (10) days after waiver of
5 arraignment; and

6 (b) if a court interpreter is needed for a party's witness, the party
7 shall notify the court in writing substantially in a form approved by the Supreme Court upon
8 service of a notice of hearing and shall indicate whether the party anticipates the proceeding
9 will last more than two (2) hours.

10 (3) If a party fails to timely notify the court of a need for a court
11 interpreter, the court may assess costs against that party for any delay caused by the need to
12 obtain a court interpreter unless that party establishes good cause for the delay.

13 (4) Notwithstanding any failure of a party or other case participant to
14 notify the court of a need for a court interpreter, the court shall appoint a court interpreter for
15 a case participant whenever it becomes apparent from the court's own observations or from
16 disclosures by any other person that a case participant is unable to hear, speak, or otherwise
17 communicate in the English language to the extent reasonably necessary to fully participate
18 in the proceeding.

19 C. **Appointment of court interpreters.**

20 (1) When a need for a court interpreter is identified under Paragraph B of
21 this rule, the court shall appoint a certified court interpreter except as otherwise provided in

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1 this paragraph.

2 (2) ~~[For cases exclusively involving municipal ordinances for which there~~
3 ~~are no comparable state statutes and cases exclusively involving charges under the Motor~~
4 ~~Vehicle Code, except for driving while under the influence of intoxicating liquor or drugs,~~
5 ~~reckless driving, or driving while license suspended or revoked, the court may appoint a~~
6 ~~language access specialist without complying with Subparagraph C(5) of this rule.] This~~
7 subparagraph does not apply in cases that involve an offense of driving while under the
8 influence of intoxicating liquor or drugs or any offense that prescribes mandatory
9 imprisonment as a penalty. The court may appoint a language access specialist, or, if no
10 language access specialist is available, any non-certified court interpreter, without complying
11 with Subparagraph C(5) or Paragraph D of this rule, if the court makes the following written
12 findings:

13 (a) either that a sentence of imprisonment will not be imposed or
14 that the charged offenses do not prescribe incarceration as a possible penalty;

15 (b) that the court has concluded after evaluating the totality of the
16 circumstances, including the nature of the court proceeding and the potential penalty or
17 consequences flowing from the proceeding, that an accurate and complete interpretation of
18 the proceeding can be accomplished with a non-certified court interpreter;

19 (c) that the proposed court interpreter has adequate language skills,
20 knowledge of interpretation techniques, and familiarity with interpretation in a court setting
21 to provide an accurate and complete interpretation for the proceeding; and

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1 (d) that the court has qualified the interpreter under Subparagraph
2 E(1) of this rule.

3 (3) ~~[Upon approval of the court, the parties may stipulate to the use of a~~
4 ~~noncertified court interpreter for non-plea and non-evidentiary hearings without complying~~
5 ~~with the waiver requirements in Paragraph D of this rule.]~~ This subparagraph applies only
6 to cases that may be disposed of without a hearing under Rule 8-503 NMRA. A defendant
7 who chooses to resolve such a case without a hearing may use either a non-certified court
8 interpreter of the defendant's own choosing or a court or municipal employee designated by
9 the judge as a competent interpreter without complying with the requirements of
10 Subparagraph C(5) or Paragraph D of this rule.

11 (4) To avoid the appearance of collusion, favoritism, or exclusion of
12 English speakers from the process, the judge shall not act as a court interpreter for the
13 proceeding or regularly speak in a language other than English during the proceeding. A
14 party's attorney shall not act as a court interpreter for the proceeding, except that a party and
15 the party's attorney may engage in confidential attorney-client communications in a language
16 other than English.

17 (5) If the court has made diligent, good faith efforts to obtain a certified
18 court interpreter and one is not reasonably available, after consulting with the Administrative
19 Office of the Courts, the court may appoint a justice system interpreter subject to the
20 restrictions in Subsubparagraph (d) of this subparagraph. If the court has made diligent, good
21 faith efforts to obtain a justice system interpreter and one is not reasonably available, after

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1 consulting with the Administrative Office of the Courts, the court may appoint a language
2 access specialist or less qualified non-certified court interpreter only after the following
3 requirements are met:

4 (a) the court provides notice to the parties substantially in a form
5 approved by the Supreme Court that the court has contacted the Administrative Office of the
6 Courts for assistance in locating a certified court interpreter or justice system interpreter but
7 none is reasonably available and has concluded after evaluating the totality of the
8 circumstances including the nature of the court proceeding and the potential penalty or
9 consequences flowing from the proceeding that an accurate and complete interpretation of
10 the proceeding can be accomplished with a less qualified non-certified court interpreter;

11 (b) the court makes a written finding that the proposed court
12 interpreter has adequate language skills, knowledge of interpretation techniques, and
13 familiarity with interpretation in a court setting to provide an accurate and complete
14 interpretation for the proceeding;

15 (c) the court makes a written finding that the proposed court
16 interpreter has read, understands, and agrees to abide by the New Mexico Court Interpreters
17 Code of Professional Responsibility set forth in Rule 23-111 NMRA; and

18 (d) with regard to a non-certified signed interpreter, in no event
19 shall the court appoint a non-certified signed language interpreter who does not, at a
20 minimum, possess both a community license from the New Mexico Regulations and
21 Licensing Department and a generalist interpreting certification from the Registry of

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1 Interpreters for the Deaf.

2 D. **Waiver of the right to a court interpreter.** Any case participant identified
3 as needing a court interpreter under Paragraph B of this rule may at any point in the case
4 waive the services of a court interpreter with approval of the court only if the court explains
5 in open court through a court interpreter the nature and effect of the waiver and makes a
6 written finding that the waiver is knowingly, voluntarily, and intelligently made. If the case
7 participant is the defendant in the criminal proceeding, the waiver shall be in writing and the
8 court shall further determine that the defendant has consulted with counsel regarding the
9 decision to waive the right to a court interpreter. The waiver may be limited to particular
10 proceedings in the case or for the entire case. With the approval of the court, the case
11 participant may retract the waiver and request a court interpreter at any point in the
12 proceedings.

13 E. **Procedures for using court interpreters.** The following procedures shall
14 apply to the use of court interpreters:

15 (1) **Qualifying the court interpreter.** Before appointing a court
16 interpreter to provide interpretation services to a case participant, the court shall qualify the
17 court interpreter in accordance with Rule 11-604 of the Rules of Evidence. The court may
18 use the questions in Form 9-109 NMRA to assess the qualifications of the proposed court
19 interpreter. A certified court interpreter is presumed competent, but the presumption is
20 rebuttable. Before qualifying a justice system interpreter or other less qualified non-certified

1 court interpreter, the court shall inquire into the following matters:

2 (a) whether the proposed court interpreter has assessed the
3 language skills and needs of the case participant in need of interpretation services; and

4 (b) whether the proposed court interpreter has any potential
5 conflicts of interest.

6 (2) **Instructions regarding the role of the court interpreter during trial.**

7 Before the court interpreter begins interpreting for a party during trial, the court shall instruct
8 the parties and others present in the courtroom regarding the role of the court interpreter.

9 (3) **Oath of the court interpreter.** Before a court interpreter begins interpreting,
10 the court shall administer an oath to the court interpreter as required by Section 38-10-8
11 NMSA1978. All oaths required under this subparagraph shall be given in open court.

12 (4) **Objections to the qualifications or performance of a court interpreter.**

13 A party shall raise any objections to the qualifications of a court interpreter when the court
14 is qualifying a court interpreter as required by Subparagraph (1) of this paragraph or as soon
15 as the party learns of any information calling into question the qualifications of the court
16 interpreter. A party shall raise any objections to court interpreter error at the time of the
17 alleged interpretation error or as soon as the party has reason to believe that an interpretation
18 error occurred that affected the outcome of the proceeding.

19 (5) **Record of the court interpretation.** Upon the request of a party, the court
20 may make and maintain an audio recording of all spoken language court interpretations or

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1 a video recording of all signed language interpretations. Unless the parties agree otherwise,
2 the party requesting the recording shall pay for it. Any recordings permitted by this
3 subparagraph shall be made and maintained in the same manner as other audio or video
4 recordings of court proceedings.

5 (6) **Court interpretation for multiple case participants.** When more than one
6 case participant needs a court interpreter for the same spoken language, the court may
7 appoint the same court interpreter to provide interpretation services for those case
8 participants. When more than one case participant needs court interpretation for a signed
9 language, separate court interpreters shall be appointed for each case participant. If a party
10 needs a separate court interpreter for attorney-client communications during a court
11 proceeding, prior to the commencement of the court proceeding, the party shall obtain a court
12 interpreter of the party's own choosing and at the party's own expense. If the party is a
13 criminal defendant represented by court-appointed counsel, a court interpreter for attorney-
14 client communications may be paid as allowed under the Indigent Defense Act and Public
15 Defender Act.

16 (7) **Use of team court interpreters.** To avoid court interpreter fatigue and
17 promote an accurate and complete court interpretation, when the court anticipates that a court
18 proceeding requiring a court interpreter for a spoken language will last more than two (2)
19 hours the court shall appoint a team of two (2) court interpreters to provide interpretation
20 services for each spoken language. For court proceedings lasting less than two (2) hours, the
21 court may appoint one (1) court interpreter but the court shall allow the court interpreter to

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1 take breaks approximately every thirty (30) minutes. The court shall appoint a team of two
2 (2) court interpreters for each case participant who needs a signed language court interpreter
3 when the court proceeding lasts more than one (1) hour. If a team of two (2) court
4 interpreters are required under this subparagraph, the court may nevertheless proceed with
5 only one (1) court interpreter if the following conditions are met:

6 (a) two (2) qualified court interpreters could not be obtained by
7 the court;

8 (b) the court makes a written finding that it contacted the
9 Administrative Office of the Courts for assistance in locating two (2) qualified court
10 interpreters but two (2) could not be found; and

11 (c) the court allows the court interpreter to take a five (5)-minute
12 break approximately every thirty (30) minutes.

13 (8) **Use of court interpreters for translations and transcriptions.** If a
14 court interpreter is required to provide a sight translation, written translation, or transcription
15 for use in a court proceeding, the court shall allow the court interpreter a reasonable amount
16 of time to prepare an accurate and complete translation or transcription and, if necessary,
17 shall continue the proceeding to allow for adequate time for a translation or transcription.
18 Whenever possible, the court shall provide the court interpreter with advance notice of the
19 need for a translation or transcription before the court proceeding begins and, if possible, the
20 item to be translated or transcribed.

21 (9) Modes of court interpretation. The court shall consult with the court

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1 interpreter and case participants regarding the mode of interpretation to be used to ensure a
2 complete and accurate interpretation.

3 (10) Remote spoken language interpretation. Court interpreters may be
4 appointed to serve remotely by audio or audio-video means approved by the Administrative
5 Office of the Courts for any proceeding when a court interpreter is otherwise not reasonably
6 available for in-person attendance in the courtroom. Electronic equipment used during the
7 hearing shall ensure that all case participants hear all statements made by all case participants
8 in the proceeding. If electronic equipment is not available for simultaneous interpreting, the
9 hearing shall be conducted to allow for consecutive interpreting of each sentence. The
10 electronic equipment that is used must permit attorney-client communications to be
11 interpreted confidentially.

12 (11) **Court interpretation equipment.** The court shall consult and
13 coordinate with the court interpreter regarding the use of any equipment needed to facilitate
14 the interpretation.

15 (12) **Removal of the court interpreter.** The court may remove a court
16 interpreter for any of the following reasons:

- 17 (a) inability to adequately interpret the proceedings;
18 (b) knowingly making a false interpretation;
19 (c) knowingly disclosing confidential or privileged information
20 obtained while serving as a court interpreter;
21 (d) knowingly failing to disclose a conflict of interest that impairs

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**Committee Approved
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- 1 the ability to provide complete and accurate interpretation;
- 2 (e) failing to appear as scheduled without good cause;
- 3 (f) misrepresenting the court interpreter's qualifications or
- 4 credentials;
- 5 (g) acting as an advocate; or
- 6 (h) failing to follow other standards prescribed by law and the
- 7 New Mexico Court Interpreter's Code of Professional Responsibility.

8 (13) **Cancellation of request for a court interpreter.** A party shall advise

9 the court in writing substantially in a form approved by the Supreme Court as soon as it

10 becomes apparent that a court interpreter is no longer needed for the party or a witness to be

11 called by the party. The failure to timely notify the court that a court interpreter is no longer

12 needed for a proceeding is grounds for the court to require the party to pay the costs incurred

13 for securing the court interpreter.

14 F. **Payment of costs for the court interpreter.** Unless otherwise provided in

15 this rule, and except for court interpretation services provided by an employee of the court

16 or the municipality as part of the employee's normal work duties, all costs for providing

17 court interpretation services by a court interpreter shall be paid by the court in amounts

18 consistent with guidelines issued by the Administrative Office of the Courts. If the court

19 determines that it does not have adequate funds to pay for the court interpretation services

20 required by this rule, the court may dismiss the proceeding without prejudice so that it may

21 be refiled in the appropriate magistrate court or district court.

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**Committee Approved
October 11, 2013**

1 [Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending
2 on or after January 1, 2013; amended by Supreme Court Order No. 13-8300-031, effective
3 for all cases pending or filed on or after December 31, 2013; amended by Supreme Court
4 Order No. _____, effective _____.]

5 **Committee commentary.** – This rule governs the procedure for the use of court interpreters
6 in court proceedings. In addition to this rule, the New Mexico Judiciary Court Interpreter
7 Standards of Practice and Payment Policies issued by the Administrative Office of the Courts
8 (the AOC Standards), also provide guidance to the courts on the certification, use, and
9 payment of court interpreters. But in the event of any conflicts between the AOC Standards
10 and this rule, the rule controls.

11 The rule requires the use of certified court interpreters whenever possible but permits
12 the use of less qualified interpreters in some situations. For purposes of this rule, a certified
13 court interpreter may not be reasonably available if one cannot be located or if funds are not
14 available to pay for one. [~~But in all instances,~~] Except as provided in Subparagraphs C(2) and
15 C(3), before a court may use a non-certified court interpreter, the court must contact the
16 Administrative Office of the Courts (AOC) for assistance and to confirm whether funds may
17 in fact be available to pay for a certified court interpreter.

18 The rule does not attempt to set forth the criteria for determining who should be a
19 certified court interpreter. Instead, the task of certifying court interpreters is left to the AOC.
20 When a court interpreter is certified by the AOC, the certified court interpreter is placed on
21 the New Mexico Directory of Certified Court Interpreters, which is maintained by the AOC

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1 and can be viewed on its web site. A certified court interpreter is also issued an identification
2 card by the AOC, which can be used to demonstrate to the court that the cardholder is a
3 certified court interpreter.

4 In collaboration with the New Mexico Center for Language Access (NMCLA), the
5 AOC is also implementing a new program for approving individuals to act as justice system
6 interpreters and language access specialists who are specially trained to provide many
7 interpretation services in the courts that do not require a certified court interpreter.
8 Individuals who successfully complete the Justice System Interpreting course of study
9 offered by the NMCLA are approved by the AOC to serve as justice system interpreters and
10 will be placed on the AOC Registry of Justice System Interpreters. Those who are approved
11 as justice system interpreters will also be issued identification cards that may be presented
12 in court as proof of their qualifications to act as a justice system interpreter. Under this rule,
13 if a certified court interpreter is not reasonably available, the court should first attempt to
14 appoint a justice system interpreter to provide court interpretation services. If a justice system
15 interpreter is not reasonably available, the court must contact the AOC for assistance before
16 appointing a non-certified court interpreter for a court proceeding.

17 In addition to setting forth the procedures and priorities for the appointment of court
18 interpreters, this rule also provides procedures for the use of court interpreters within the
19 courtroom. In general, the parties are responsible for notifying the court if they or their
20 witnesses will need a court interpreter. But in most cases, the court will be responsible for
21 paying for the cost of court interpretation services, regardless of who needs them. However,

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1 the court is not responsible for providing court interpretation services for confidential
2 attorney-client communications during a court proceeding, nor is the court responsible for
3 providing court interpretation services for witness interviews or pre-trial transcriptions or
4 translations that the party intends to use for a court proceeding. When the court is responsible
5 for paying the cost of the court interpretation services, the AOC standards control the
6 amounts and procedures for the payment of court interpreters.

7 Although this rule generally applies to all court interpreters, the court should be aware
8 that in some instances the procedures to follow will vary depending on whether a spoken or
9 signed language court interpreter is used. Courts should also be aware that in some instances
10 when court interpretation services are required for a deaf or hard-of-hearing individual,
11 special care should be taken because severe hearing loss can present a complex combination
12 of possible language and communication barriers that traditional American Sign
13 Language/English interpreters are not trained or expected to assess. If a deaf or hard-of-
14 hearing individual is having trouble understanding a court interpreter and there is an
15 indication that the person needs other kinds of support, the court should request assistance
16 from the AOC for a language assessment to determine what barriers to communication exist
17 and to develop recommendations for solutions that will provide such individuals with
18 meaningful access to the court system.

19 While this rule seeks to provide courts with comprehensive guidance for the
20 appointment and use of court interpreters, the courts should also be aware that the AOC
21 provides additional assistance through a full-time program director who oversees the New

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1 Mexico Judiciary's court interpreter program and who works in tandem with the Court
2 Interpreter Advisory Committee appointed by the Supreme Court to develop policies and
3 address problems associated with the provision of court interpreter services in the courts.
4 Whenever a court experiences difficulties in locating a qualified court interpreter or is unsure
5 of the proper procedure for providing court interpretation services under this rule, the court
6 is encouraged, and sometimes required under this rule, to seek assistance from the AOC to
7 ensure that all case participants have full access to the New Mexico state court system.

8 Subparagraphs (C)(2) and (C)(3) of this rule were amended in 2014 to address the
9 appointment of non-certified court interpreters in limited types of cases. In drafting these
10 amendments, the committee considered due process considerations and the following four
11 factors identified by the Department of Justice as relevant to Title VI of the Civil Rights Act
12 of 1964: (1) the number of limited English proficient (LEP) persons eligible to be served by
13 the municipal court; (2) the frequency with which LEP persons come into contact with the
14 municipal court; (3) the nature of the cases heard by the municipal court; and (4) the cost of
15 language access services and the resources available to the municipal court. See Guidance
16 to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National
17 Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455,
18 41,459 (June 18, 2002) (identifying four factors that a recipient of federal funding should
19 consider to determine the extent of the recipient's obligation under Title VI to provide
20 services for LEP persons).

21 Subparagraph (C)(2) allows the court to appoint a language access specialist or other

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1 qualified, competent court interpreter in any case in which the defendant does not face the
2 possibility of imprisonment and has not been charged with an offense involving driving
3 while under the influence of intoxicating liquor or drugs. The court must use Form 9-115
4 NMRA to appoint a non-certified court interpreter under Subparagraph (C)(2).

5 Subparagraph (C)(3) applies only to the limited types of cases that may be disposed
6 of without a hearing under Rule 8-503 NMRA. In such a case, the defendant may choose to
7 resolve the case by signing an appearance, entering a plea of no contest or guilty, waiving
8 trial, and paying a fine. Subparagraph (C)(3) permits such a defendant to use an interpreter
9 of the defendant's own choosing or a court or municipal employee, if available. See 67 Fed.
10 Reg. 41,462 (explaining that an LEP individual should be permitted to use an interpreter of
11 his or her choosing as long as use of an informal interpreter is appropriate under the
12 circumstances); 67 Fed. Reg. 41,461 (explaining that hiring multilingual staff is often the
13 best, most economical option for providing language access services).

14 The procedures outlined in Subparagraphs (C)(2) and (C)(3) allow the use of non-
15 certified court interpreters only in cases that do not involve serious penalties or the possibility
16 of imprisonment. These provisions facilitate the administration of justice in municipal courts
17 because municipalities have limited budgets to pay for certified court interpreters, and few
18 certified court interpreters are available to serve in New Mexico's rural areas, particularly
19 in cases involving minor code or ordinance violations, e.g., minor traffic infractions or the
20 failure to trim weeds. Requiring the court to find and appoint a certified court interpreter in
21 such cases could impose an undue burden and delay on both the LEP person and the court.

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**Committee Approved
October 11, 2013**

- 1 [Adopted by Supreme Court Order No. 12-8300-022, effective for all cases filed or pending
2 on or after January 1, 2013; as amended by Supreme Court Order No. _____,
3 effective _____.]

CRIMINAL FORMS
FORM 9-115
[NEW MATERIAL]

Committee Approved
October 11, 2013

9-115. Appointment of non-certified court interpreter.

[For use with Magistrate Court Rule 6-115(C)(3) NMRA,
Municipal Court Rule 8-113(C)(3) NMRA]

STATE OF NEW MEXICO
CITY OF _____
MUNICIPAL COURT

STATE OF NEW MEXICO
CITY OF _____,

v. No. _____

_____, Defendant.

APPOINTMENT OF NON-CERTIFIED COURT INTERPRETER

*(For use only in cases in which a sentence
of imprisonment will not be imposed)*

The defendant needs a court interpreter because the defendant is unable to communicate in the English language to the extent reasonably necessary to fully participate in the proceedings. The court is appointing a non-certified court interpreter, _____ (*name of court interpreter*), to interpret for the defendant after making the following findings.

1. (*choose one*)

☐ A sentence of imprisonment will not be imposed; or
☐ the defendant is not charged with any offense that prescribes incarceration as a possible penalty.

2. ☐ The court has concluded after evaluating the totality of the circumstances, including the nature of the court proceedings and the potential penalty or consequences flowing from the proceedings, that an accurate and complete interpretation of the proceedings can be accomplished with a non-certified court interpreter.

3. ☐ The proposed court interpreter has adequate language skills, knowledge of interpretation techniques, and familiarity with interpretation in a court setting

CRIMINAL FORMS
FORM 9-115
[NEW MATERIAL]

Committee Approved
October 11, 2013

- 1 to provide an accurate and compete interpretation for the proceedings.
2
3 4. ☐ The court has inquired into whether the proposed court interpreter has
4 assessed the language skills and needs of the defendant and whether the
5 proposed court interpreter has any potential conflicts of interest.
6
7 5. ☐ The proposed court interpreter is qualified¹ has taken the following oath: "I
8 solemnly swear or affirm that I will make a true and impartial interpretation
9 in an understandable manner using my best skills and judgment."²

10
11 Having made the above findings, it is hereby ORDERED THAT _____
12 (*name of non-certified court interpreter*) is appointed to serve as court interpreter.
13

14
15 _____
16 Judge
17

18 **USE NOTES**
19

- 20 1. When determining whether a proposed non-certified interpreter is qualified
21 to interpret for the proceedings, the court may refer to the suggested questions listed in Form
22 9-106 NMRA.
23 2. This non-certified court interpreter oath is adapted from the rules of evidence,
24 Rule 11-604 NMRA, and the Court Interpreters Act, NMSA 1978, Section 38-10-1 (1985).

CRIMINAL FORMS
FORM 9-116
[NEW MATERIAL]

First Discussion Draft
October 11, 2013

9-116. Determination that court interpreter is not needed.

[For use with Magistrate Court Rule 6-115 NMRA,
Municipal Court Rule 8-113(C)(3) NMRA]

STATE OF NEW MEXICO

CITY OF _____

MUNICIPAL COURT

STATE OF NEW MEXICO

CITY OF _____,

v. No. _____

_____, Defendant.

**DETERMINATION THAT COURT
INTERPRETER IS NOT NEEDED**

Although a case participant has requested a court interpreter, I find by clear and
convincing evidence that an interpreter is not needed. The following facts support this
determination:

_____.

Judge

Language Access Priorities: FY12-FY13 & FY14-FY15

COMPLETED			
FY12-FY 13 Priority	Status	FY 14-FY15 Priority	Target Date
Interpreters Post Certification Training	Completed		
Production of Public Service Announcements (PSAs) for radio regarding language accessibility of New Mexico state courts	Completed		
Posting of all completed Language Access Plans on nmcourts website	Completed		
Webinar Trainings on new Supreme Court Rules	Completed Jan/Feb/ March 2013		
100% of District, Metro Courts & 80% of Magistrate Courts have Language Access Plans	Completed June 2013	Completed	
Pilot Scheduling Software and Subsequent Recommendation	Completed	Completed	
ON-GOING			
FY12-FY 13 Priority	Status	FY 14-FY15 Priority	Target Date
Translation of key portions of nmcourts website into Spanish, Navajo, and Vietnamese.	Recommendations developed, but no action to-date	Translation of key portions of nmcourts website	June 30, 2014
Minimum of one certified language access specialist per court.	Ongoing	Minimum of one certified language access specialist per court.	Ongoing
Remote Interpreting Policies & Procedures: LAAC Approval AOC and/or Supreme Court Approval	Ongoing	Pilot Remote Interpreting Services	Continuing as a JID/LAS joint project
Outreach and Recruitment of Interpreter Candidates	Ongoing	Outreach and Recruitment of Interpreter Candidates	Ongoing
Recommendations to Supreme Court re translation of documents and acceptance of documents in languages other than English	Convened Project Team, Research, Ongoing	Recommendations to Supreme Court re translation of documents and acceptance of documents in languages other than English	June 30, 2015
Reconvene Partnership	No action	Reconvene Justice System Interpreter Resource Partnership	November, 2014
Continue collaborative projects with NMCLA and NCSC	Ongoing	Outreach and Recruitment of Interpreter Candidates	Ongoing
Coordinate SJI Grant if awarded	Ongoing	Oversee Language Access Basic Training Project as funded by SJI	October 1, 2012 – March 31, 2014

Pueblo Languages Project	Ongoing	Reconvene Pueblo Languages Project	February, 2014
LAAC Policy Recommendations	Ongoing	Secure Action on LAAC Court Interpreter Policy Recommendations	December 31, 2013 – still pending
LAAC Recommendations re: qualifications and pay rates for interpreters for court-ordered services	Ongoing	Secure action on LAAC recommendations re language access to court-ordered services	March, 2014
Training for Judges and Development of Bench Resources	On-going; benchcard completed 1/14/14	Continue training for judges on working with an interpreter and language access and Language access presentation and workshops at 2014 Conclave	Ongoing, report July of <u>each year</u> ; 2014 Conclave confirmed
Develop Training for Court Staff on working with deaf, hard of hearing & blind individuals	Trainings developed/ delivered/ ongoing	Guidelines for Assisting Blind and Illiterate Persons	June 30, 2014
NEW PRIORITIES			
		Develop and implement Language Access Performance Measures Survey Instrument	March, 2015
		Institute and manage web-based interpreter scheduling management system	January, 2014
		All State courts have completed Language Access Plans	June 30, 2014
		Develop written LAS protocols and code of ethics	June 30, 2014, Approved by LAAC 11/2013
		Recommendations and education re interpreters for attorney/client communication	September 1, 2014/ ongoing
		Create NES jurors section for jury manual/training for interpreters	December 31, 2014
		Secure action on LABT Fundamentals Module as mandatory for NM judicial employees	June 30, 2014
		SJI Grant Management/Pilot and Launch of Language Access Basic Training	April 2014 - Ongoing
		All state courts have Spanish language voice mail/info options	June 30, 2014